IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7124 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LALABHAI M PURABIA

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for the Petitioner.

Mr. L.R.Pujari, AGP for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/06/2002

ORAL JUDGEMENT

The petitioner got his name registered with employment exchange and his name was sent to Dental Hospital from the employment exchange. The petitioner was appointed as a sweeper with effect from 28.12.1984. Though the initial appointment was for 15 days, but from time to time he was appointed and continued in the Dental

Hospital. After 30th May, 1986, he was not allowed to and he was not called for Badli work, as a result thereof, he sent letters dated 18.11.1986 and 24.11.1986, but he was not continued in service as he had crossed the age limit of 30 years on the date of last letter for his appointment on the post. Vide letter dated 24th November, 1986, the petitioner was informed that he has crossed the age limit of 30 years, hence he cannot be considered for further appointment in the hospital. The petitioner has challenged the order of the respondent dated 24th November, 1986 and this petition has been filed for a direction to the respondents restraining them from acting and implementing the decision dated 24th November, 1986 and for a further direction to the respondents to reinstate the petitioner with effect from 30th May, 1986 with full back wages and to absorb the petitioner to the post of sweeper on permanent basis.

2. Affidavit-in-reply has been filed by the respondents. It is stated in the affidavit that the age limit is relaxable only in the case of Scheduled caste candidates upto 30 years. In this case, the petitioner was appointed in breakable service on class-IV service from 28th December, 1984. His last temporary appointment was made from 21st May, 1986 to 30th May, 1986. The petitioner's date of birth is 1.6.1956. As such, the petitioner was not allowd to continue his services from 1.6.1986 and the appoiontment from 28th Decemebr, 1984 to 30th May, 1986 was for 13 times with breaks of service in each appointments. The petitioner's appointment was on leave vacancy on various breaks purely on temporary basis. There were three permanent vacancies of class-IV service in the hospital and a list was asked from the employment exchange as well as Social Welfare Office for filling up the above vacant posts. A list was received from the employment exchange, but it did not contain the name of the petitioner and the list from the office of Social Welfare Office was not received. It is also stated that in addition to this, at that time, he did not complete of 365 days for which he was required to get Government approval as per the Government in Health and Family Welfare Department resolution dated 29th May, 1984. It is also asserted that the petitioner was appointed as Badli karmachari in leave vacancy on various break period purely on temporary basis upto 30th June, 1986. Thereafter, the office had not given him any appointment order due to his over-age. The petitioner made a representation to give him appointment as Badli karmachari. The office replied vide letter dated 26th November, 1986. The petitioner wrote a leter to Health Minister, Gandhinagar dated 26th November, 1986. In this

connection, Director of Medical Education and Research, Ahmedabad had asked remarks from the office of the respondents vide letter dated 7.1.1987. The respondents' office replied to the directorate vide letter dated 13th February, 1987 containing all details. The Director had instructed the respondents' office to approach employment exchange for further necessary guidance as to whether the petitioner can be appointed on the basis of the list sent by Employment Exchange under which he was given temporary appointment. The employment exchange has given its opinion vide letter date 7.9.1987 stating that there is no objection for giving appointment to the petitioner on permanent basis. After some correspondence, the Director has submitted his proposal to the Government that recommendation for appointment of the petitioner vide letter dated 6.4.1988 and the Government has required some query and that query has also been replied vide letter dated 3.8.1988. The order of the State Government is still awaited.

3. The learned counsel for the petitioner submitted that the petitioner's service has not been continued only due to over-age though he was within the age limit when he was appointed and he he cited Rule 8(5) of The Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 in order to show that upper age limit for the purpose of recruitment prescribed in the Rules shall not apply to a candidate who is already in Gujarat Government service either as a permanent Government servant or as a temporary Government servant or as a temporary Government officiating continuously for six months in substative or leave vacancy or in a vacancy caused as a result of deputation of other servants and was within the age limit prescribed for the post at the time of his first appointment in Government service. He also relied on the decision of this Court in the case of Dr. Kamal Singh Bengali vs. Gujarat Public Service Commission reported in 1991(1) GLR, 382 wherein it was held that the petitioner was within the age limit at the initial appointment. The latter date does not render him ineligible for appointment and the petition was allowed.

4. I have carefully considered the contentions of the learned counsel for the parties. In this case, the petitioner's name was called for from the employment exchange for employment of class-IV employee. Though the petitioner was appointed on leave vacancy temporary, but he continued in service from 28th December 1984 to 30th May, 1986. This fact has been admitted in the affidavit-in-reply. The age limit cannot be said to

be a barto an employee who has already been appointed and worked at initial stage in the department concerned. Moreover, in the present case, the petitioner's name has been recommended bythe Director to the Government for the appointment vide letter dated 6.4.1988. The Director is awaiting the decision of the Government regarding appointment of the petitioner, but the Director has not received any response from the Government. As such, in the facts and circumstances, it appears that the department concerned has no objection to have services of the petitioner. Hence, they are waiting for the formal decision of the Government. In the facts and circumstances of the case, the respondent no.1 Secretary, Health and Family Welfare, Government of Gujarat, Gandhinagar is required to be directed to take a decision sympathetically for the appointment of the petitioner in the same post on permanent basis as recommended by the Director of Health, Medical Science and Medical Education, Ahmedabad.

5. In the result, this petition is required to be allowed and is accordingly hereby allowed. The order dated 24.11.1986 of the respondent no.2 is hereby quashed and set aside. The State Government is directed to take a sympathetic decision regarding appointment of the petitioner in the same post on permanent basis as recommended by the Director of Health, Medical Science and Medical Education, Ahmedabad within a period of two months from the date of presentation of certified copy of this judgment. Rule is made absolute to the aforesaid extent with no order as to costs.

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